

PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

**Proposing rule making related to vehicle impoundment
and providing an opportunity for public comment**

The Public Safety Department hereby proposes to amend Chapter 6, “Vehicle Impoundment,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 80.9(2) and 321.89.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 80.9(2) and 321.89.

Purpose and Summary

The purpose of the proposed amendments to Chapter 6 is to update the Department’s rules for vehicle impoundment in order to align them with the Iowa Supreme Court decision in *State v. Ingram* dealing with the inventory of closed containers. Additional changes were made within the chapter to provide a clearer interpretation of when a vehicle may be impounded.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Pursuant to the provision of rule 661—10.222(17A), the Department does not have authority to waive requirements established by statute. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the provisions of rule 661—10.222(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on October 18, 2019. Comments should be directed to:

Chandlor Collins
Department of Public Safety
Oran Pape State Office Building
215 East 7th Street
Des Moines, Iowa 50319
Phone: 515.725.6185
Email: collins@dps.state.ia.us

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Amend **661—Chapter 6** as follows:

CHAPTER 6 VEHICLE IMPOUNDMENT [Ch 6 as appeared before 6/27/79 rescinded] [Prior to 4/20/88, see Public Safety Department[680] Ch 6]

661—6.1(17A,321) Vehicle impoundment. The patrol division and other peace officer members of the department may impound any vehicle determined to be “abandoned” as defined in Iowa Code section ~~321.89(1)“b,”~~ 321.89(1)“a,” provided that:

1. The officer shall first attempt to determine the owner through department of transportation records and request that the communications division advise an owner found thereby that the vehicle must be moved within a reasonable time or it will be impounded, and
2. Either the owner cannot be found or the owner fails to remove the vehicle within a reasonable time.

661—6.2(17A,321) Vehicles which may be impounded immediately.

6.2(1) No change.

6.2(2) Vehicles which are involved in an accident when immediate impoundment is necessary:

- a. To preserve evidence which will be used in an administrative or judicial proceeding; or
- b. To protect the vehicle from theft or further damage when the ~~legal custodian~~ driver or owner is unavailable or incapable to give consent to such impoundment or make other arrangements for the vehicle; or
- c. To prevent further accidents when the vehicle is so situated as to appear to constitute a hazard to traffic.

6.2(3) Vehicles which an officer has ~~reason to believe are~~ probable cause that the vehicle is being used to transport contraband.

6.2(4) Vehicles involved in a person’s death when the medical examiner or a peace officer determines:

- a. That seizure is necessary to secure evidence needed in the investigation, including but not limited to an investigation of the cause and manner of death.
- b. That circumstances indicate the vehicle may be removed or tampered with before written authorization for its impoundment can be obtained, or that written authorization for impoundment has been refused or is impracticable.
- c. That the vehicle is situated on a public highway in such a manner that it may constitute a hazard to traffic.

6.2(5) Vehicles under the control of a person at the time of arrest:

- a. No change.

b. If the vehicle is not capable of legal operation or the vehicle is not legally parked under state or local code or ordinance; or

~~b. c.~~ To preserve evidence which will be used in an administrative or judicial proceeding; or

~~c. d.~~ To protect the vehicle from theft or further damage when the legal custodian driver or owner is unavailable or incapable to give consent to such impoundment or make other arrangements for the vehicle.

6.2(6) Vehicles positioned upon a public highway in such a ~~location as to indicate~~ manner that they may constitute a hazard to traffic.

661—6.3(17A,321) Vehicles which need not be impounded immediately.

6.3(1) If a vehicle is unattended, an officer shall tag it. A record is kept by the officer at the district to which the officer is assigned. After the period of time prescribed in Iowa Code section 321.89, the unattended vehicle shall be declared an abandoned vehicle.

~~**6.3(2)** If the vehicle is thought to be abandoned, the officer shall attempt to determine the owner through department of transportation records, and request that the communications division advise the owner that the vehicle must be moved within a reasonable time or it will be impounded. If the owner cannot be contacted, or if the owner does not remove the vehicle, the vehicle may be impounded.~~

661—6.4(17A,321) Impoundment procedure.

6.4(1) No change.

6.4(2) Within 24 hours of towing an impounded vehicle, the officer shall:

a. Complete an inventory of all property in the vehicle and a notation of any parts of the vehicle which appear to be missing or damaged. ~~The inventory shall include a list of the contents of each container in the vehicle. Each container shall be opened unless the contents of a particular container are evident from its exterior. If keys, a locksmith, or other means of access are not reasonably available to the officer, the officer is authorized to break locks to gain access to the vehicle and its locked compartments.~~ The inventory is a record which is intended for use in ensuring the safe return of the lawful possessor's property and resolving questions regarding the condition or contents of the vehicle.

b. No change.

This rule is intended to implement Iowa Code sections 80.9(2) "a" and 321.89.

661—6.5(17A,321) No change.

661—6.6(321) No change.

These rules are intended to implement Iowa Code sections 80.9(2) "a" and 321.89 and *Florida v. Wells*, 110 Sup. Ct. 1632.